

Statement of Maria A. Pallante  
Register of Copyrights and Director  
United States Copyright Office  
before the  
Subcommittee on the Legislative Branch  
Committee on Appropriations  
United States Senate  
Fiscal 2015 Budget Request

April 8, 2014

Dear Madam Chairwoman, Ranking Member Hoeven and Members of the Subcommittee:

I appreciate the opportunity to present written testimony in support of the United States Copyright Office. The Office administers the copyright law and related provisions of Title 17, provides expert policy assistance to the Congress, and provides significant support to the U.S. Trade Representative, Department of Justice and other federal departments engaged in matters of national and international intellectual property.

We are in the midst of an especially significant period for the copyright system and the Copyright Office. The Congress is leading a comprehensive review of the nation's copyright laws, to assess how well they are working in the current digital environment.<sup>1</sup> In support of this effort, the Copyright Office is leading multiple studies, public roundtables and interagency discussions on a variety of urgent issues, from the statutory and regulatory framework for music licensing to the scope of exclusive rights for authors to the problem of orphan works. In response to concerns about the increasing costs of federal litigation, the Office delivered a major report to the Congress last year regarding the creation of a small claims mechanism within the copyright law (and Copyright Office).

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<sup>1</sup> See Press Release, U.S. House of Representatives Committee on the Judiciary, Chairman Goodlatte Announces Comprehensive Review of Copyright Law (Apr. 24, 2013), available at [http://judiciary.house.gov/news/2013/04242013\\_2.html](http://judiciary.house.gov/news/2013/04242013_2.html) ("There is little doubt that our copyright system faces new challenges today... Even the Copyright Office itself faces challenges in meeting the growing needs of its customers—the American Public.")<sup>1</sup>

See also *The Register's Call for Updates to U.S. Copyright Law: Hearing before the Subcomm. On Courts, Intellectual Prop. & the Internet of the H. Comm. On the Judiciary, 113<sup>th</sup> Cong. (2013)*(statement of Maria A. Pallante, Register of Copyrights and Director, U.S. Copyright Office).

The Copyright Office is equally engaged in examining the state of its own operations, keeping in mind the increasing sophistication of our customers and the copyright marketplace. We have engaged robustly with stakeholders regarding both their frustrations and their recommendations regarding our services. Through this process, it has become clear that the Copyright Office will require both small and large improvements in the years ahead, and in some cases may need to entirely rework the ways in which it administers the copyright law, to better reflect the ways in which creative content is created, delivered, accessed and protected in digital environments.

These challenges are both exciting and daunting. For example:

(1) The copyright registration system, now accessible online, requires a faster and more capable interface, secure repositories, global identification standards, and submission practices that match the manner in which film, photographs, books, music, and software are created and licensed in the digital environment;

(2) The copyright recordation system (in which assignments, licenses and other copyright documents are publicly indexed) is still a paper-based process and must therefore be redesigned, automated, and connected through metadata and APIs to the registration system and outside registries;

(3) The directory of designated agents (for Internet service providers seeking certain protections of the Digital Millennium Copyright Act) requires an online interface, updated regulations and sophisticated search ability; and

(4) The database of pre-1978 copyright records is partially digitized but must be integrated into a useful chain of title and public record.

The services of the Copyright Office affect the legal rights and economic interests of both copyright owners and the users of their creative content. These are important global interests. A recent study found that the core copyright industries—those whose primary purpose is to produce and distribute creative works—accounted for nearly 6.5% of the U.S. domestic gross product in 2012, exceeding \$1 trillion for the first time.<sup>2</sup> These industries also directly and indirectly employ 11.1 million workers, or about 8% of the U.S. workforce.

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<sup>2</sup> Stephen E. Siwek, *Copyright Industries in the U.S. Economy: The 2013 Report* (2013) (prepared by Economists, Inc. for the International Intellectual Property Alliance), available at [http://www.iipa.com/pdf/2013\\_Copyright\\_Industries\\_Full\\_Report.PDF](http://www.iipa.com/pdf/2013_Copyright_Industries_Full_Report.PDF).

Copyrighted works also remain one of the country's most economically valuable exports: together the sound recording, motion picture, software, and publishing industries sold works worth \$142.0 billion to overseas markets, far more than either the aerospace or pharmaceutical industries.<sup>3</sup>

The Copyright Office is an important institution and it has served the Nation well since 1897. Nonetheless, the changes that have occurred in the copyright marketplace in recent years are like no others in the history of copyright law. As a result, our customers are appropriately calling for a more nimble and forward-thinking Copyright Office—one that is more technologically savvy and interoperable with the marketplace it serves.

In terms of funding, I believe that the Copyright Office produces an outsized impact in proportion to its budgetary needs. But the current funding level is not sustainable and I look forward to working with the Congress to find solutions. Aside from additional appropriated dollars, which have always been critical to the Copyright Office, these might include mechanisms to allow for more flexibility in regard to both the recovery and spending of fee revenue.

### **Challenges of the Current Fiscal Environment**

The Office appreciates the partial restorations that the Committee provided to the Office in the 2014 appropriation. However, appropriations are still down about 7% from 2010 levels, and fiscal 2014 have been an especially challenging year because fee revenue in the first quarter was the lowest it has been in five years. Moreover, implementation of a new fee schedule in May will make revenue somewhat unpredictable for the remainder of the fiscal year.

Ideally, the Office would be able to rely on its reserve fund to make up the shortfall. The reserve fund is derived principally from fee collections that exceed the spending authority granted for a particular year. But in recent years, fee collections have regularly fallen below our spending authority. As a result, the reserve has fallen below and remained under \$5 million. This may seem a relatively small figure, but these funds may nonetheless make the difference when it comes to patching an IT system or staffing an important study for the Congress. The unpredictability of fee revenue makes it critical that the Copyright Office maintain sufficient reserve funds to deal with contingencies effectively.

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<sup>3</sup> Siwek, *supra*, at 16.

The accumulated results of budget cuts and unpredictable revenue income have taken a toll on the Office's ability to provide critical services at the level the public demands. Declining budget support has impacted or will impact the Office in the following ways, among others:

Staffing: Although the Office is understaffed, it has been forced to reduce new hiring. As of this writing, the Office is projected to utilize approximately 387 FTEs in fiscal 2014 – down almost 100 people since 2007.

We have an especially acute shortage of seasoned lawyers—that is, the experienced legal experts who can participate in or lead complex discussions. This is doubly problematic now because the Congress is so substantively involved in domestic copyright policy (in a manner that has not been the case in many years) and is thus drawing heavily (and appropriately) on Copyright Office lawyers for studies, preparatory work and leadership. Lawyers also support the significant statutory interpretation and regulatory work that comes with administering the registration program, public recordation of transfers and related documents, mandatory deposit provisions, and statutory licenses.

Adequate staff levels are essential to the integrity of the registration program—both its accuracy and efficiency. A copyright certificate of registration is prima facie evidence of validity of the copyright and of the facts stated therein, including the scope of the claim and ownership, and is given significant deference by federal courts. As a result of fewer staff in the registration program, the Office is beginning to see increases in registration processing times—meaning that the public is waiting longer to have their registration applications processed.

Travel budgets: The Office's lean budget has left us unable to fully and consistently participate in bilateral and multilateral treaty negotiations, as well as important intergovernmental meetings. For example, the Office has been unable to attend all of the relevant meetings of the Standing Committee on Copyright at the World Intellectual Property Organization in Geneva and has been unable to attend all of the trade negotiations pertaining to intellectual property in the Pacific Rim. This is unfortunate because the framework for copyright law is largely being defined in the international arena, and the United States is in the midst of an extremely busy period of negotiations involving trade and treaty obligations.

IT Projects: The IT of the Copyright Office is hosted by and managed through the Library but the Copyright Office is responsible for the development and maintenance costs of its core systems. Technology infrastructure affects all of the Office's key services, and is the single greatest factor in its ability to administer copyright registration, recordation services, and statutory licenses effectively. It will be the decisive factor in building new services and migrating old ones into the twenty-first century.

## **Fiscal 2013 and 2014 Activities**

### **Special Projects**

Last year marked the conclusion of many of the projects outlined in the *Priorities and Special Projects of the United States Copyright Office*, our two-year effort to identify needed improvements to the quality and efficiency of the Office's services in the twenty-first century. Two of these projects rate special mention: the Technical Upgrades Project, and the Compendium Rewrite.

The Copyright Office's Technical Upgrades Project focused on identifying issues relating to the reliability, security and search ability of Office's records, as well as the ease of use and convenience of our online services. Public response to the Office's Federal Register notice called attention to shortcomings with the digital repository, user interface, quality of data and public records, standard identifiers, information architecture and infrastructure, and customer experience. Many commenters cited basic frustrations, including the need to access previous applications for reference, and the need for enhanced features, such as customized dashboards.

Rewriting the *Compendium of Office Practices and Policies* was the most ambitious of our projects. The *Compendium* is the comprehensive internal guidebook of registration and other practices relied upon by Office staff. It also serves as a recognized authority consulted by copyright owners, legal practitioners, and the courts. A team of experienced attorneys and registration experts engaged in the auditing, reconciling, and documenting of current registration practices. The team devoted special attention to relevant developments in the courts and new technologies for creating and distributing creative works. During this process, it has become clear that this revision was but the first step in developing a registration program for the twenty-first century.

In addition to the above, we launched several new initiatives to enhance the knowledge and expertise of our staff. In 2013, I announced the Kaminstein scholar-in-residence program (which we implemented in 2013 with Professor Robert Brauneis of George Washington University Law School, who joined the Office for a year). I also announced the Barbara Ringer honors fellowship program, through which the Office is able to offer some of the nation's finest law school graduates a prestigious two-year clerkship at the Copyright Office (beginning fall, 2014). We also launched a major internal training program, the Copyright Academy, through which we educate staff at all levels in the basics of copyright law.

### **Law and Policy**

The Register of Copyrights is the principal advisor to Congress on issues of domestic and international copyright policy and, by statute, provides expert assistance to executive branch departments as well. The Copyright Office prepares major studies for Congress on highly complex issues, presides over administrative hearings and public roundtables, testifies before Congress and coordinates with intellectual property offices in the executive branch. The Office works closely with both copyright owners and users of copyrighted works to sustain an effective national copyright system that balances the interests of both sides with respect to issues ranging from enforcement to fair use.

As noted above, the Congress is now involved in a particularly busy period of copyright review and possible copyright revision that is especially important and rather rare. This type of comprehensive review has not occurred for decades. The Register and the Copyright Office are playing a critical role in supporting the ongoing congressional effort, through expert analysis, reports, roundtables, meetings, and testimony. For example, in the past year, the Office:

- Delivered a major report on the issue of copyright small claims. The report proposed that Congress create a process whereby parties can more efficiently pursue small copyright infringement matters.
- Completed a study concerning how a federal resale royalty right for visual artists would affect the creation, licensing, sale, exhibition, dissemination, and preservation of works of visual art.
- Convened a major public inquiry and roundtables to review solutions for orphan works and mass digitization of copyrighted works.
- Commenced a comprehensive study on the music licensing marketplace, one of the most complex and fragmented areas of copyright law.

The Office also works with the Department of Justice on critical copyright cases, with the U.S. Trade Representative on negotiations around the world, and with the U.S. Patent and Trademark Office, State Department and Intellectual Property Enforcement Coordinator on a routine basis. These activities require significant expertise and commitment, and are a valuable service to the United States.

## **Administration of the Copyright Law**

### Registration

The special projects mentioned above were an important foundational step in assessing both technology issues and registration practices.

Meanwhile, the Office has experienced an increase in the number of pending registration claims over the past two years. This growth is directly related to staff shortages and frustrations with the online systems. (The systems are largely reliable but are limited in design and functionality and by many accounts sluggish for staff and customers alike.) The Office is doing a remarkable job of processing claims under the circumstances.

### Recordation

Recordation of copyright transfers and other transactions is an area of particular focus for the Office, as it provides an ongoing record of copyright ownership, licensing, and related data that can further commerce and research. But while most copyright registrations are now handled electronically, the Office had to forego improvements to the paper-based recordation function due to budgetary constraints. The process of transposing data from the printed documents into a basic electronic index is labor-intensive.

The Office has an obligation to remake the recordation function in a manner that best serves the needs of the current marketplace. We have laid the groundwork for a reengineering effort. Through a series of public meetings held in late March, 2014, the Office has sought input from businesses, trade associations, and attorneys, as well as the general public, to better understand how to make the recordation system more accessible and efficient for users. The Office will continue to engage in these discussions throughout fiscal 2014 as it determines strategies to update the recordation system as soon as possible in a manner that befits the digital age.

## Statutory Licenses

The Copyright Office administers certain statutory license provisions of the U.S. Copyright Act. These licenses cover activities including the making and distribution of phonorecords of musical works, the public performance of sound recordings by satellite radio and internet services, secondary transmissions of radio and television programs by cable television systems, and secondary transmissions of network and non-network stations by satellite carriers.

In fiscal 2013, the Office's Licensing Division collected nearly \$316 million in royalty fees and distributed approximately \$324 million in royalties to copyright owners, according to either voluntary agreements among claimants or as a result of determinations of the Copyright Royalty Board. The division also continued a multiyear business process reengineering program designed to decrease processing times for the examination of statements of account, implement online filing processes, and improve public access to Office records. The new processes will be implemented and refined throughout fiscal 2015, 2016 and beyond.

## Administering Acquisitions for the Library of Congress

The Copyright Office administers the so-called "mandatory deposit" provisions of the Copyright Act, which require publishers to deposit two copies of certain U.S.-published works with the Library of Congress (as conditioned in further detail by regulations). Like many parts of the Copyright Act, these provisions were enacted with analog works in mind and do not seamlessly translate to the digital environment. The Office must, therefore, find the resources to conduct the necessary legal analysis in this area and to consult the universe of stakeholders through appropriate public processes, including the copyright owners whose works may be at issue and the Library's collection and preservation experts. In fiscal 2013, as a result of its work in both registration and mandatory deposit, the Office transferred books and other deposits to the Library valued at approximately \$29.4 million, works that the Library might otherwise have had to purchase. The estimated value of transferred materials is considerably more than the amount the Office has received in recent years from appropriated dollars, making it a remarkable positive return for taxpayers.



## **Fees for Services**

On November 14, 2013, pursuant to 17 U.S.C. § 708(b), the Office delivered to the Congress a schedule of proposed fee adjustments with respect to the registration of claims, recordation of documents, and other public services. This followed a two-year public process that included stakeholder meetings and the solicitation of written comments. The statute requires that the Register establish fees that are “fair and equitable and give due consideration to the objectives of the copyright system.” In proposing the adjustments, the Office considered both cost recovery and the need to price services at a level that encourages participation in the registration and recordation processes. Thus, for what may be the first time in the Office’s history we differentiated certain fees in the latest fee study, leaving fees flat for some individual authors while raising fees for publishers, producers, and those filing multiple claims or claims in multiple works. The Office will implement the new fees on May 1, 2014.

## **Copyright Office Needs**

The Copyright Office sits at the center of a dynamic and commercially important legal system. Its work is critical to many, affecting not only the legal rights and economic interests of private actors but also the Congress, the courts, and the economy. Like the copyright law it administers, the Office is feeling the strain and demand of the world around it. It has both immediate and long-term needs, some simple upgrades and others that may require altogether new services and processes. Having completed a number of major public discussions and special projects, it is ready to commence strategic plans in a number of areas, including the recordation system, as resources become available. I look forward to these important challenges and systemic improvements.

## **Fiscal 2015 Budget Request**

The request put forth by the Library of Congress for fiscal 2015 as regarding the Copyright Office is \$53.068 million, offset by fee collections of \$27.971 million and licensing royalty collections of \$5.611 million (the latter of which are applied to the Office’s Licensing Division and the Copyright Royalty Judges).

The request is limited to inflationary increases to maintain existing spending levels and staff costs, as follows:

(1) A 2.8% increase (\$1.272 million) over fiscal 2014 for Copyright Basic to support mandatory pay-related and price level increases affecting administration of the Office's core business systems and public services;

(2) A 2.6 % increase (\$131,000) over fiscal 2014 in offsetting collection authority for the Copyright Licensing Division to support mandatory pay-related and price level increases affecting the administration of the Office's licensing functions; and

(3) A 2.7% increase (\$41,000) over fiscal 2014 for Copyright Royalty Judges to support mandatory pay-related and price level increases.

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Thank you Madam Chairwoman. I appreciate your support of the U.S. Copyright Office and the copyright system that we administer for the Nation.